

Denver Journal of International Law & Policy

Volume 11
Number 1 *Fall*

Article 11

May 2020

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Denver Journal International Law & Policy

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Recommended Citation

International Law & Policy, Denver Journal (2020) "EMS Currency Rates Realigned," *Denver Journal of International Law & Policy*. Vol. 11 : No. 1 , Article 11.

Available at: <https://digitalcommons.du.edu/djilp/vol11/iss1/11>

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Much of the confusion and diversity has resulted because these other courts do not separate their analyses of subject matter and personal jurisdiction questions. Since *Texas Trading* does analyze these questions separately, uniform minimum contacts standards can be applied in all cases.

IV. CONCLUSION

After an exhaustive analysis of jurisdiction under the commercial activity exception to the Immunities Act, the *Texas Trading* court developed a unique five-part test. This test separates the subject matter, personal jurisdiction, statutory, and constitutional questions, while providing standards for each part of the test. The *Texas Trading* test should provide needed uniformity in a substantial number of decisions involving the exercise of jurisdiction over foreign states. Thus, *Texas Trading's* elaboration of specific guidelines will give needed definition to the minimum contacts standard in the context of the Immunities Act.

The court noted throughout the opinion that access to the courts is the determinative factor in a decision to exercise jurisdiction. This liberal attitude has been embraced by a New York federal district court in *In re Rio Grande Transport*.⁷⁵ The *Rio Grande Transport* court repeatedly emphasized the concern of Congress that those aggrieved by the commercial acts of a foreign sovereign should be given a forum. Thus, the *Texas Trading* five-part test seems destined to lead to a uniform but broad exercise of jurisdiction over foreign sovereigns by the New York federal courts.

Wannell Baird

EMS Currency Rates Realigned

The European Monetary System (EMS) is the European Community's mechanism for linking the currencies of West Germany, France, Italy, Ireland, Denmark, Belgium, Luxembourg, and the Netherlands in a joint float against the U.S. dollar and other major currencies.¹ By promoting stable exchange rates, the EMS seeks to integrate and harmonize the

75. *In re Rio Grande Transport*, 516 F. Supp. 1155 (S.D.N.Y. 1981).

1. For an in-depth discussion of the European Monetary System, see Development, *The European Monetary System and the European Currency Unit*, 10 DEN. J. INT'L L. & POL'Y 175 (1980). See also Rey, *The European Monetary System*, 17 COMM. MKT. L. REV. 7 (1980).

economies of member states.

On October 4, 1981, the values of the West German mark and the Dutch guilder were boosted by 5.5% against their European partners, and the value of the French franc and the Italian lira were cut by 3%. Aside from two minor adjustments in the exchange rates in September and November 1979,² there have been no other events to mar the operation of the EMS. This re-evaluation of member currencies was the most radical shift in the EMS's three-year history.

Some analysts had expected a major adjustment to occur on the weekend of August 15, 1981, with the big change resting on the French franc.³ However, realignments have never occurred when the market was expecting them, and when they have finally happened they have always been less significant than had been anticipated. The revaluation was basically the result of widely disparate economic conditions of the EMS members. Inflation rates during the period before revaluation, for example, ranged from 20% in Italy to 15% in France and 6% in Germany.⁴

Many observers noted that severe pressures were building within the EMS as a result of divergent French and German economic policies. Germany attempted to restrain monetary expansion to the lower end of its four to seven percent target range. The Socialist government of François Mitterand, on the other hand, moved in the opposite direction. Focusing on reducing unemployment, the French government increased the minimum wage, reduced the work week, and embarked on a program to create 210,000 public sector jobs. It also attempted to bolster the franc with record high interest rates.

The French franc fell 31% against the dollar from July 1980 to August 1981. The French increased interest rates to 22%, and spent about \$12 billion of their reserves to prop up their sagging franc against the other EMS currencies and the dollar as capital fled the country.⁵ In the week ending September 24, 1981, for example, the French central bank spent nearly \$2 billion to support the franc.⁶ The Germans also intervened with more than \$6 billion in foreign exchange market purchases.⁷

Under the joint float arrangement, each of the currencies in the EMS

2. The finance ministers of the EMS raised the value of the Deutsche mark two percent against six other EMS currencies and five percent against the Danish krone in the first realignment of the six-month-old EMS on September 24, 1979. *Wall St. J.*, Sept. 24, 1979, at 4, col. 1. The second realignment of the EMS currencies took place on November 30, 1979, when the Danish government devalued its krone by five percent against the other currencies of the EMS. *BULL. EUR. COMMUNITY (CCH)*, Nov. 1979, at 30.

3. *Bus. Wk.*, Aug. 10, 1981, at 80.

4. *N.Y. Times*, Oct. 5, 1981 at 1, col. 1.

5. *Bus. Wk.*, Aug. 10, 1981, at 80. When the market rate for any currency pair reaches its predetermined limit, both central banks have a legal obligation to intervene to keep their currencies within the band. Res. No. 32/1978, Dec. 8, 1978, of the European Council, [1978] 3 *COMMON MKT. REP. (CCH)* ¶ 10,095.

6. *N.Y. Times*, Oct. 5, 1981, at 1, col. 1.

7. *Bus. Wk.*, Aug. 10, 1981, at 80.

is given a fixed rate against each other's currency and is allowed to float 2.25% above or below that rate. A few days before the realignment, the French franc had fallen below its band against the German mark.⁸ France did not want to devalue its currency, which would have been a politically embarrassing event for the new Socialist government. Some Common Market specialists indicated they welcomed the realignment, but others were disappointed that the franc was not devalued further.⁹

The continued credibility of the European Monetary System depends on the speed and smoothness with which the political decisions to realign can be taken. The London Times was highly critical of the realignment, which came after eight hours of intense discussions:

The ministers and their officials met today under a deadline imposed by world financial markets. Failure to have produced a political decision in time for the opening of the Tokyo foreign exchange market at one o'clock Brussels time on Monday morning could have resulted in a day of chaos on international money markets.¹⁰

Furthermore, Belgium successfully resisted pressures to devalue its franc—long the weakest EMS currency—on the ground that its interim government, holding power until elections in November 1981, did not have the authority to approve such a step.¹¹ But the failure to agree on a devaluation of the Belgian franc was seen by many as a grave weakness in the new pattern of exchange rates that would sooner or later result in speculative currency flows upsetting the system.¹² Some analysts predict that the EMS will come under renewed pressure, possibly within six months.¹³ Others feel that another realignment in 1982 looks "distinctly possible."¹⁴

Nevertheless, most analysts agree that the EMS has fulfilled its basic aim of helping to steady exchange rate fluctuations, especially during a period marked by dollar weaknesses and strengths as well as wide swings in interest rates.¹⁵ The changes should make French and Italian goods

8. Wall St. J., Oct. 5, 1981, at 5, col. 1.

9. "That decision was more political than financial," one analyst contended. Wall St. J., Oct. 6, 1981, at 31, col. 1.

10. London Times, Oct. 5, 1981, at 1, col. 6.

11. Wall St. J., Oct 5, 1981, at 5, col. 1.

12. London Times, Oct. 6, 1981, at 17, col. 6. Indeed, on February 21, 1982, the Belgian franc was devalued 8.5%, which was its first devaluation since 1949. THE ECONOMIST, Feb. 27, 1982, at 61. The Danish krone was also devalued 3%. *Id.*

13. *Id.* at 19, col. 3.

14. THE ECONOMIST, Oct. 18, 1981, at 70.

15. "The European Monetary System has emerged remarkably well from [the] realignment of its major currencies The EMS has thus survived a potential source of major disturbance in the foreign exchange markets." London Times, Oct. 6, 1981, at 13, col. 1. The EMS might be increasing its membership and responsibilities as there has been speculation that the United Kingdom and Greece may join the EMS. Although the United Kingdom decided not to join the EMS as a full member, it forms part of the European Currency Unit (ECU), has transferred its share of reserves to the European Monetary Fund, and has pledged to maintain a "stable" exchange rate. THE ECONOMIST, Mar. 17, 1979, at 74. Greece

cheaper in the six other countries of the EMS as well as in the United States. By making exports from France and Italy more competitive while simultaneously decreasing their imports, the realignment could help these countries reduce large trade deficits and restore international confidence in their currencies. These changes should also enable France and Italy to start reducing the high interest rates they were forced to adopt to prevent the flight of capital to other countries. In addition, inflationary tendencies in West Germany and the Netherlands should be reduced as a result, while the French franc should gain in strength. Finally, the realignment will discourage investment in the U.S. dollar—a very favorable haven due to high U.S. interest rates—and relieve the criticism levelled at U.S. fiscal policy. Hopefully, realignment may also lessen the counterattacks launched by Washington in defense of its policies.

J.H.W.Jr.

***Rex v. Cia. Pervana De Vapores, S.A.:* Sovereign Immunity And The Constitutional Right To Jury Trial**

Three circuit courts of appeal¹ recently considered the seventh amendment right² to jury trial in conjunction with actions brought under the Foreign Sovereign Immunities Act of 1976 (FSIA).³ Specifically, the courts addressed whether all actions brought pursuant to the FSIA must be tried to the court without a jury, and whether the Act is the sole basis for federal subject matter jurisdiction in civil actions against agencies or instrumentalities of foreign sovereigns. More importantly, the courts considered whether, if the answers to both of the above questions are in the affirmative, the FSIA is consistent with the seventh amendment guaran-

joined the European Community on January 1, 1981, but has not linked its drachma to the system even though it has signed the basic EMS agreements. *Wall St. J.*, Mar. 16, 1981, at 26, col. 2.

1. See *Williams v. Shipping Corp. of India*, 653 F.2d 875 (4th Cir. 1981), and *Ruggerio v. Compania Pervana De Vapores "Inca Capac Yupanqui"*, 639 F.2d 872 (2d Cir. 1981), wherein the courts affirmed district court orders striking jury demands on grounds consistent with those of *Rex v. Cia. Pervana De Vapores, S.A.*, 660 F.2d 61 (3d Cir. 1981).

2. The seventh amendment states in relevant part: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . ." U.S. CONST. amend. VII.

3. 28 U.S.C. § 1330(a) (1976).